

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/798,620	Confirmation No.	6177
Applicant	:	Richard D. Lane		
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Art Unit	:	2427		
Examiner	:	Mark P. Stanley		
Docket No.	:	030072		
Customer No.	:	23696		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests a Pre-Appeal Brief Request for Review, based upon the Examiner's failure to establish a prima facie case of obviousness under 35 U.S.C. § 103. As outlined below, the applied references fail to disclose or suggest one or more claimed elements recited in Applicant's independent claims. For this reason, the obviousness rejections under 35 U.S.C. § 103 are improper and must be reversed. Details of some of the factual and legal errors of the rejections are set forth below.

For simplicity and brevity, Applicant has primarily focused the arguments below on pending independent claim 1. In the Final Office Action, the Examiner rejected claim 1 under 35 USC § 103(a) as being unpatentable over Christopoulos et al. (U.S. Publication No. 2001/0047517; hereinafter, "Christopoulos") in view of Kost et al. (U.S. Publication No. 2002/0154691; hereinafter, "Kost"), Short et al. (U.S. Patent No. 6,789,110; hereinafter, "Short"), and Mantha et al. (U.S. Publication No. 2004/0023622; hereinafter, "Mantha"). By setting forth the clear grounds of error with respect to claim 1, Applicant does not assert that these are the only errors that the Examiner has made, nor does Applicant waive any arguments that may be asserted in an Appeal Brief.

Throughout prosecution, claim 1 has been amended to require, *inter alia*, encoding parameter sets that include a first encoding parameter set for encoding only a first type of the plurality of types of data, a second encoding parameter set for encoding only a second type of the plurality of types of data different from the first type, a third encoding parameter set for encoding only a third type of the plurality of types of data different from the first and second types and a fourth encoding parameter set for encoding multiple types of the plurality of types of data. Christopoulos in view of Kost, Short and Mantha fails to teach or suggest the plurality of encoding parameter sets also required by claim 1.

In the previous Amendment filed December 2, 2010, Applicant demonstrated that Christopoulos only encodes two different types of data, video data and image data. The previous Office Action dated August 5, 2010 (as well as the current Final Office Action) agrees on this point, noting in the rejection of this feature of claim 1 that “while Christopoulos states selecting multiple different parameter sets to encode two different types of multimedia data ... Christopoulos does not explicitly state the use of a three [sic] parameter sets for encoding three different data type [sic] or an encoding parameter set for encoding multiple types of the plurality of types of data.” The previous Office Action dated August 2, 2010 (and the current Office Action) cited to Kost to overcome this deficiency of Christopoulos, alleging that Kost discloses an encoding set to encode audio data and an encoding set to encode both video and audio data.

Applicant then demonstrated in this previous Amendment that the Office Action relied on an improper construction of paragraph [0084] of Kost to reach the conclusion that Kost cures the above noted deficiencies of Christopoulos. Briefly, Applicant noted that paragraph [0084] of Kost indicates that “in addition to the video, the audio **12b** may be encoded.” (Emphasis in original) While the previous and current Office Action construed this portion of Kost to suggest that there is an encoding parameter set for encoding audio and video and another for encoding the audio, Kost makes clear throughout its entirety that the Kost system typically encodes **both** the audio and video (*see, e.g.,* FIG. 1), except for this portion of paragraph [0084], which suggests that the audio data **may** be encoded. Kost, however, always encodes the video data, and may or may not encode the audio data. Yet, nothing in this portion of Kost suggests any case where audio data is encoded and the video data is not encoded. Instead, Kost makes it clear that the video data is always encoded and the audio data may not or may not be encoded.

Applicant concluded the previous Amendment by noting that Christopoulos in view of Kost would at most only suggest three parameter sets and therefore, combination of references relied upon by the Office Action fails to teach or suggest the four parameter sets required by claim 1. Moreover, none of the portions of Short and Mantha relied on by the Office Action in rejecting claim 1 overcome this deficiency of Christopoulos and Kost. Consequently, the combination resulting from Christopoulos in view of Kost, Short and Mantha fails to teach or suggest this feature of claim 1 directed to the four different parameter sets.

In the current Final Office Action, the section entitled "Response to Arguments" addressed the argument summarized above, expressing disagreement with Applicant's arguments. In particular, the Office Action indicated that Kost discloses that the audio data may be encoded differently than the video data, surmising from this difference that there may be a parameter set to encode the audio data only, and that there may be another parameter set to encode both the audio data with video data. Again, Applicant disagrees for the reasons presented above. There is nothing in the applied references to suggest that separate encoding parameter sets exist in Kost for both the audio data and the video data.

The Final Office Action continued in the "Response to Argument" section by paraphrasing Applicant's argument above and stated that "just because the audio data may be encoded differently than the video data, does not mean that there is a separate encoding parameter set only for audio data." The Final Office Action then indicated the Examiner's disagreement, and stated:

"[T]here appears to exist no clear differentiation between parameter sets other than the parameter sets are to encode a specific type of data. With respect to the above statement, the Examiner is unable to differentiate how for instance a specific encoding parameter set for audio such as mp3 may be used with respect to Kost, while a specific encoding parameter set for video data without audio data such as mpeg may be used."

Applicant is unsure as to how this comment is relevant to the discussion of whether or not Kost discloses encoding of both audio data and video data using a single parameter set, or using two separate parameter sets. Kost is clear on this point. In particular, the Kost system encodes both audio data and video data, but in some instances may not encode the audio data. Therefore, the Kost system encodes either audio data and video data or only encoded video data, resulting in the three parameter sets noted above, when applied in view of Christopoulos and the other applied

references. For the reasons set forth above, the applied references do not teach or suggest the four parameter sets explicitly required by claim 1.

Considering the Examiner's professed difficulty in construing the encoding parameter sets of claim 1 in view of the plain language of claim 1 recited above, it seems that the Examiner is not construing the claims as a whole, which conflicts with the requirements of MPEP 2141.02. Given the plain language of claim 1 presented above, the encoding parameter sets are more than a definition of parameter sets to encode a particular type of data, but are used to enable transcoding so as to meet a user preference in terms of a quality of service and a billing rate. Thus, the plain language of claim 1 conflicts with the statement in the Final Office Action that "there appears to exist no clear differentiation between parameter sets other than the parameter sets are to encode a specific type of data." Given the number of features recited by claim 1, either directly describing the encoding parameter sets or associating the encoding parameter sets with various other features of claim 1 (many of which are reproduced above), the Final Office Action failed to construe the claims as a whole, in direct conflict with the explicit requirement of MPEP 2141.02 requiring that the claims be construed as a whole.

When construed as a whole, the plain language of claim 1 requires the encoding parameter sets to be selected so as to achieve a user preference with respect to a quality of service and billing rate (whether low or high quality of service or low or high billing rate). According to claim 1, in response to the first user preference, the encode manager selects one of the plurality of encoding parameter sets that provides a high rate of compression and the lower quality of service at the lowest billing rate. Claim 1 also requires that, in response to the second preference, the encoder manager selects one of the plurality of encoding parameter sets that provides the higher quality of service at the higher billing rate. Thus, claim 1 requires that one of the plurality of encoding parameter sets is selected in response to each of the first and second preferences, where only the fourth of the plurality of encoding parameter sets, according to claim 1, may encode multiple types of data. Accordingly, claim 1 provides a way by which user preferences may be integrated into transcoding decisions in such a manner that multiple different encoding parameter sets may be defined based on user preferences with respect to the quality of service and the billing rate. Accordingly, the parameter encoding sets of claim 1 are differentiated based on more than just the types of data each parameter encoding set encodes.

The applied references generally represent a system capable of encoding two types of data (i.e., video and image data) as well as a two or more types of data (i.e., both video and data). The fact that the current Final Office Action considers encoding audio differently than video as being suggestive of a separate audio-only encoding parameter set and a video-only encoding parameter set assumes a construction of encoding parameter sets that is not supported by the plain language of claim 1. In other words, claim 1 specifically requires a fourth encoding parameter set for encoding multiple types of the plurality of types of data, in direct contrast with this construction presented in the Final Office Action. The Final Office Action did not address how the disclosure of Kost with regard to encoding both audio data and video data reads on this fourth encoding parameter set recited by claim 1 when the audio and video data are encoded in the "same" manner, but when not encoded in the same manner or differently, this Kost disclosure somehow reads on separate audio-only and video-only encoding parameter sets. There is nothing in claim 1 to suggest that the parameters defined in the fourth encoding parameter must be the same for the multiple types of data, only that the fourth encoding parameter set is for encoding multiple types of the plurality of types of data. For this reason, the Examiner's construction of this fourth encoding parameter set appears to improperly require limitations not included in claim 1.

Furthermore, Applicant is unsure how video data and audio data could be encoded the "same" when they represent entirely different data that generally relies on entirely different encoding schemes to accomplish adequate compression. In any event, there is nothing in any of the applied references that would have suggested the plurality of encoding parameter sets required by Applicant's claim 1 for the reasons presented above.

In view of the foregoing, the Examiner's rejection of at least claim 1 lacks the rational underpinning required to support a legal conclusion of obviousness under 35 U.S.C. § 103 and should be withdrawn. Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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